IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 777 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

YAGNESH P DESAI

Versus

GUJ STATE TEXTILE CORPN LTD

Appearance:

MR SHALIN MEHTA for MR GIRISH PATEL for Petitioner

MS PJ DAVAWALA for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 17/11/2000

ORAL JUDGEMENT

The petitioner who was working as a Technical Advisor-II with the respondent No.1 Gujarat State Textile Corporation Ltd. challenges the order at Annexure "A" to the petition, passed on 1st October, 1988, by which the Corporation resolved to abolish with immediate effect the post of Technical Advisor (II) and further resolved that

the services of the petitioner who was at that time working as a Technical Advisor (II) should be terminated in accordance with the terms of his appointment order dated 28.3.1985 and he should be relieved from service with immediate effect by paying him two months' salary in lieu of two months notice period, which was stipulated in Clause 3 of the terms and conditions incorporated in the order of his appointment. An Account Payee cheque dated 1.10.1988 was forwarded to the petitioner for payment of his net salary for two months, after usual deductions under the Rules.

2. The learned Counsel appearing for the petitioner strongly contended that the manner in which the action of abolishing the post was taken in the background of the facts and circumstances of the case should lead this Court to an inference that the action was taken only with a view to terminate the service of the petitioner. It was argued that though allegations have been made in the petition against the then Chairman respondent No.2, which led to the decision for abolishing the post for the purpose of terminating the services of the petitioner, the respondents have not cared to deal with these allegations and therefore, they should be taken to have been accepted. He pointed out from paragraphs 7 to 11 of the petition that it was in terms alleged against the Chairman that because the petitioner did not act in tune with the terms dictated by the Chairman, he wanted to take revenge against the petitioner and therefore, under the guise of abolition of post, his services were terminated. It was contended that the Chairman had made serious allegations against the petitioner when the resolution was passed in the meeting for abolition of the post and termination of the petitioner's services and as mentioned in paragraph 10 of the petition, he had stated that since it was not possible to hold a Departmental enquiry against the petitioner, there was no option but to abolish the post which he was holding. It was also argued that on 11.7.1988 a decision was already taken to retain two posts of Technical Advisors including the one held by the petitioner when it was decided to abolish the third post and the only inference that could be drawn in the wake of that decision taken a couple of months before the impugned order was made, was that the post of Technical Advisor (II) was abolished only with a view to doing away the services of the petitioner. It was contended that the decision to abolish the third post of Technical Advisor was taken after obtaining a report and no review was undertaken after the decision to retain two posts was taken on 11.7.1988. It was therefore contended that the impugned order was malafide and amounted to

colourable exercise of the powers of the respondents. The learned Counsel placed heavy reliance on the observations of the Supreme Court in paragraph 7 of its decision in State of Haryana Vs. Shri Das Raj Sangar and anr. reported in AIR 1976 S.C 1199 to the effect that as long as the decision to abolish the post was taken in good faith, the same cannot be set aside by the Court. He contended that the Court was required to examine whether the decision was taken in a good faith or not. He submitted that the facts of the case before this Court disclosed that the decision was not taken in good faith. He also relied upon the decision of the Supreme Court in S.S. Dhanoa Vs. Union of India & ors. reported in AIR 1991 S.C 1745, pointing out that reasons put-forth for rescinding the earlier order by which more members to the Election Commission were added, were examined by the Supreme Court. The Supreme Court has in terms held in the said decision that the question whether a post should be retained or abolished is essentially a matter for the Government to decide and that it was not open to the Court to go behind the wisdom of the decision and substitute its own opinion for that of the Government on the point as to whether a post should or should not be abolished. The Supreme Court approvingly referred to the dictum in the earlier case of Ramanatha Pillai Vs. State of Kerala, reported in AIR 1973 SC 2641, in which the Court had observed that a post may be abolished in good faith. The order abolishing the post may lose its effective character if it is established to have been made arbitrarily, malafide or as a mask of some penal action within the meaning of Article 311(2) of the Constitution of India.

3. There cannot be no dispute over the proposition that the Court can go into the question as to whether an order of abolition of a post was made in good faith or not. In the present case, it will be seen from the order dated 28th March, 1985 at Annexure "C" to the petition, appointing the petitioner as Technical Advisor (Processing) that under Clause (3) thereof, it was stipulated that on satisfactory completion of the period of probation, the petitioner was to be confirmed in the service of the Corporation. It was further specifically stipulated that thereafter, his services could be terminated by two months' notice on either side. In the service bond which was executed by the petitioner, it was reiterated by him that after his confirmation his services could be terminated by two months' notice. Admittedly, the decision making body of the respondent Corporation was the Board of Directors. As stated in para 3 of the petition, there were six members in the

Board of Directors and the respondent No.2, who was also the Chief Secretary to the State Government, was its Chairman. The other members of the Board consisted of Additional Chief Secretary of Industires, Mines and Energy Department - Mr. Vinay Sharma, IAS; Finance Secretary Mr. M.S. Dayal, IAS; Mrs. R. Shroff, IAS, a nominee of the State Government; a nominee of IDBI and Mr. A.K. Chakravorty, IAS, full-time Managing Director. Admittedly, out of three posts of Technical Advisors, the third post was abolished as noted in the office order dated 11.7.1988 at Annexure "B" to the petition. It was recorded in that order that pursuant to the decision taken by the Board of Directors in its 191st meeting held on 23.6.1988, the third post of Technical Advisor was discontinued with immediate effect, while the two remaining posts of the Technical Advisors were re-designated as Technical Advisor (I) and Technical Advisor (II). In view of the abolition of the third post, the work of Technical Advisors was re-allocated and distributed amongst the two incumbents including the petitioner, who was at that time re-designated as Technical Advisor (II). It appears that before the decision to abolish post of Technical Advisor was taken, opinion was sought from the Ahmedabad Textile Industry's Research Association, which is produced at Annexure-II (page 56 of the petition), by the petitioner. In that communication dated 7.5.1988, addressed by the Director of the Ahmedabad Textile Industry's Research Association in response to the letter of the respondent Corporation dated 5.5.1988, the said Research Association had, for the detailed reasons given in that communication, advised the respondent Corporation that there should be only one Technical Advisor and that the system of multiple Technical Advisors was not conducive to good administration. The functions of one Technical Advisor were identified and it was opined that having one Technical Advisor would strengthen his responsibility and also make him accountable to the Head Office of the Corporation. This communication clearly shows that there was an expert opinion given by the said Research Association that there ought to be only one Technical Advisor. The process appears to have been started in this direction by abolishing the third post as reflected from the office order dated 11.7.1988. It is stated by the learned Counsel that at that time there was no third incumbent to man that post. It was therefore easy to immediately abolish that post. It appears that thereafter, a decision is taken by the Board of Directors in its 192nd meeting held on 28th Sept. 1988 as recorded in the office order dated 1.10.1988, wherein it was resolved to abolish with immediate effect the post of

Technical Advisor (II), which was originally designated as Technical Advisor (Processing). This decision was clearly in tune with the opinion rendered by the Research Association in its communication dated 7th May, 1988. Merely because the decision to abolish two out of three posts was not taken on 11th July, 1988 and at that time decision was taken to retain two posts, that did not preclude the Board of Directors to take a decision later on to have only one post of Technical Advisor. As noted above, six high officials were involved in the decision making process of the Board of Directors and it is not possible to accept the contention that the decision to abolish the post was taken only with a view to terminate the services of the petitioner. In the background of the opinion of the Research Association to have only one Technical Advisor for the Corporation and the fact that a decision has been taken by the Board of Directors as recorded in the order, no inference of malafide action can be drawn from the instances which are alleged in paragraphs 7, 8 and 9 of the petition. It is not even alleged by the petitioner that the Chairman had ever asked him to help out any of the persons who are said to have been sponsored by the Chairman. There is no reliable evidence from which it can be inferred that the Chairman bore any grudge against the petitioner. No inference of malafide intention can be made by surmises or conjectures, especially when the decision was taken by a Board of Directors, which consisted of as many as six high officers. Even the allegation in paragraph 10 of the petition that the Chairman had during the meeting alleged that the petitioner was responsible for financial irregularities is not borne out from any reliable material because, the petitioner has, in that paragraph only stated that he had come to know about this from "some reliable sources", without disclosing as to what those sources were.

4. In the above view of the matter, there is absolutely no reason to infer that the decision to abolish the post which was held by the petitioner was not taken in good faith. The petitioner's services were liable to be terminated as per the terms of his employment, even after his confirmation, by giving him two months' notice and there was therefore, absolutely no need to abolish the post held by him, when his service could have been terminated with simple two month's notice even as per the terms and conditions of his appointment. There is therefore no substance in the petition. The petition is rejected. Rule is discharged with no order as to costs.

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*/Mohandas